

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-008677-002 DT

07/28/2016

HON. TERESA SANDERS

CLERK OF THE COURT
S. Radwanski
Deputy

STATE OF ARIZONA

ELLEN DAHL

v.

EARNEST LEE MCALLUM (002)

STEPHEN L DUNCAN
MARCI A KRATTER

CAPITAL CASE MANAGER

RULING

The Court has read and considered defendant's *Motion for Individual, Sequestered Voir Dire and for Procedural Orders* filed November 10, 2015.

Defendant asks the Court to allow specific procedures regarding jury selection. The Court will address with the parties the method to be used for jury selection at the FTMC. The Court will conduct a time prescreen of prospective jurors. The Court will distribute a jury questionnaire. Prospective jurors will be questioned in small groups.

The defendant requests that other procedures be followed in selecting jurors. He asks that prospective jurors be individually examined in sequestration in the court's chambers in order to best insure that the jury be composed of fair and unbiased individuals. He has not shown that an open *voir dire* proceeding presents a clear and present danger to his right to a fair trial by an impartial jury, Rule 9.3; he merely speculates that some prospective jurors may not be candid in a group setting.

Defendant also asks that the attorneys be permitted the widest latitude in examining prospective jurors. Regarding the scope of voir dire, the Court intends to follow the law, as set forth by the United States Supreme Court and the Arizona Supreme Court. Pursuant to *Morgan v. Illinois*, 504 U.S. 719 (1992), and *State v. Glassel*, 211 Ariz. 33, 116 P.3d 1193 (2005), the Court will allow counsel to examine prospective jurors on their basic beliefs, views, biases and prejudices concerning the death penalty, as well as their general views concerning aggravating and mitigating circumstances that must be considered in determining whether to impose a

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sentence of life or death. *See, State v. Burns*, 237 Ariz. 1, ¶20, 344 P.3d 303 (2015)(“In capital cases, a trial court must permit a defendant to ask potential jurors whether they would automatically vote for the death penalty. *Morgan v. Illinois*, 504 U.S. 719, 729-33 (1992).”).

The Court will not allow questions by counsel that groom or condition prospective jurors regarding evidence that may be presented at trial, or that commit them to taking certain positions depending on actual or hypothetical factual scenarios. A Court is not required “to allow a defendant to voir dire potential jurors about specific mitigating circumstances.” *State v. Johnson*, 212 Ariz. 425, 434, ¶31, 133 P.3d 735, 744 (2006). The same is true of specific aggravators. *State v. Smith*, 215 Ariz. 221, 231, ¶42, 159 P.3d 531, 541 (2007). *Morgan* was not meant to allow a defendant to ‘speculate or precommit on how that juror might vote based on any particular facts.’” *Id.*, quoting *United States v. McVeigh*, 153 F.3d 1166, 1207 (10th Cir. 1998). See also Rule 18.5, Ariz.R.Crim.P.; *State v. Melendez*, 121 Ariz. 1, 3, 588 P.2d 294, 296 (1978).

However, the Court will allow the parties to ask case-specific questions during voir dire if the questions are appropriate. For example, in *State v. Garcia*, 224 Ariz. 1, 226 P.3d 370 (2010), the Arizona Supreme Court held that “[t]he trial court did not abuse its discretion in allowing the State to ask prospective jurors if they could consider imposing a death sentence if a defendant had not actually shot the victim.” *Id.* at 9, ¶16, 226 P.3d at 378. The Court noted that in some cases, “highly general” questions may not be adequate to explore juror bias, and thus more specific questions are required. *Id.* The Court distinguished *Smith* and *Johnson*, noting that in *Garcia*’s case, the State did not ask potential jurors to “precommit to a specific position;” instead, the State asked jurors if they could consider the death penalty in circumstances in which Arizona law permits it. *Id.*

Thus, the Court will not allow questions that ask potential jurors to precommit to a specific position regarding aggravating circumstances or mitigating circumstances, or the death penalty in general. If appropriate, the Court will allow case-specific questioning that merely asks jurors if they could consider either life imprisonment or the death penalty when the law allows it. The Court will rule on specific questions when and if they are asked and an objection is raised by opposing counsel.

The Court does not believe that conducting voir dire in groups will preclude prospective jurors from candidly responding to the Court’s and counsel’s questioning. However, if it becomes necessary to question any juror individually during the course of voir dire, either for privacy reasons or to avoid tainting the other prospective jurors, the Court will do so.

IT IS ORDERED denying defendant’s Motion for Individual, Sequestered Voir Dire and for Procedural Orders.